

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

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U.S. DISTRICT COURT
DISTRICT OF MASS.

TREMONT REALTY CAPITAL, INC.,
Plaintiff,

v.

PINNACLE GROUP, LLC, ADAMS
CANYON RANCH, LLC, JOHN LANG,
and MICHAEL GRADY,
Defendants.

DOCKET NO. 04-11853-RGS

**DEFENDANTS' MOTION TO DISMISS PURSUANT FED. R. CIV. P. 12(b)(2),
OR IN THE ALTERNATIVE,
MOTION FOR TRANSFER OF VENUE PURSUANT TO 28 U.S.C. § 1404(a)**

Now come the defendants, Pinnacle Development Group, LLC, Adams Canyon Ranch, LLC, John Lang, and Michael Grady (hereinafter collectively referred as "Defendants"), and move to dismiss plaintiff Tremont Realty Capital, Inc.'s ("Tremont") Complaint for lack of personal jurisdiction over Defendants, pursuant to Federal Rule of Civil Procedure 12(b)(2). In the alternative, for the convenience of the parties and witnesses, and in the interest of justice, Defendants move for transfer of venue pursuant to 28 U.S.C. § 1404(a) to the United States District Court, District of Arizona (Phoenix Division).

1. In making these Motions, Defendants state that they all have their principal place of business in Arizona, and are all residents of Arizona.
2. Russell Posorske, Senior Director for Tremont's Arizona office, is a resident of the state of Arizona, and approached Defendants with solicitation for business on behalf of Tremont in Arizona.

3. All negotiations between Tremont and Defendants leading up to, and including the execution of the agreement with Tremont, took place in Arizona.

4. Leading up to the agreement between Tremont and Defendants, none of the defendants ever negotiated deal points over the telephone or by e-mail with any of Tremont's employees based in Massachusetts.

5. The execution of the agreement took place in Arizona.

6. All witnesses known to Defendants who work for the Defendants reside in Arizona.

7. All relevant third-party witnesses are residents of, or have principal places of business in Arizona.

8. No agents of the Defendants have traveled to Massachusetts for business purposes.

9. All the original drawings, models, and plans for the project are in Arizona.

10. The tax returns for ACR and Pinnacle are all filed in the states of Arizona and California.

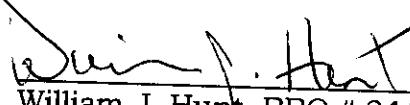
In support of these Motions, Defendants rely upon, and incorporate by reference, the Memorandum of Law and Affidavit of Michael Grady, both filed herewith.

THEREFORE, for all of the foregoing reasons and those stated in the supporting Memorandum of Law, Defendants Pinnacle Group Development, LLC, Adams Canyon Ranch, LLC, John Lang, and Michael Grady, respectfully request that their Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(2) be granted. In the alternative that their Motion to Dismiss for lack of personal jurisdiction is not granted,

Defendants respectfully request that their Motion for Transfer of Venue Pursuant to 28 U.S.C. § 1404(a) be granted.

Respectfully submitted,

CLARK, HUNT & EMBRY


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Date: October 15, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by ~~mail (by hand)~~ on 10/13/04.

